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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN - 9 1997

Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Access Charge Reform ) CC Docket No. 96-262

To: The Commission

**OPPOSITION TO JOINT PETITION FOR A PARTIAL  
STAY AND FOR IMPOSITION OF AN  
ACCOUNTING MECHANISM PENDING JUDICIAL REVIEW**

The Competitive Telecommunications Association ("CompTel") hereby opposes the Joint Petition for a Partial Stay and for Imposition of an Accounting Mechanism Pending Judicial Review ("*Stay Motion*") filed by Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell (collectively, "SBC") on June 3, 1997, in the above-captioned matter as it pertains to the application of interstate access charges to unbundled network elements. As explained below, SBC has failed to make the showing necessary for grant of its *Stay Motion*. Moreover, issuance of the stay would undermine the Commission's unbundled network element regime and seriously impede the development of competition in the market for local exchange and exchange access services. The *Stay Motion* thus must be denied with regard to the prohibition on SBC's imposition of interstate access charges on unbundled network elements contained in the Commission's *Access Charge Reform Order*.<sup>1/</sup>

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<sup>1/</sup> *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, FCC 97-158 (released May 16, 1997). While CompTel addresses herein only those parts of the *Stay Motion* relating to interstate access charges and unbundled network elements, it opposes all aspects of the *Stay Motion*.

**I. SBC Has Not Shown A Significant Likelihood Of Success On The Merits In Connection With The Application Of Interstate Access Charges To Unbundled Network Elements**

The Commission has already considered and rejected all the substantive points SBC raises in support of its contention that it is likely to succeed on the merits of its claim that the FCC erred in prohibiting the application of interstate access charges to unbundled network elements. In fact, the Commission has reviewed this question twice, in two different contexts, and concluded both times that SBC (and other incumbent local exchange carriers) should not be permitted to assess interstate access charges on unbundled network elements. First, in the *Local Competition Order*,<sup>2/</sup> and again in the *Access Charge Reform Order*,<sup>3/</sup> the Commission considered and rejected SBC's claims. The *Stay Motion* presents no new arguments to suggest a different result will be reached in the future.

**A. The Access Charge Reform Order Is Not Inconsistent With The Eighth Circuit Stay Of The Local Competition Order**

SBC alleges that the *Access Charge Reform Order*<sup>4/</sup> is in conflict with the stay of the *Local Competition Order* issued by the U.S. Court of Appeals for the Eighth Circuit ("*Eighth Circuit Stay*").<sup>5/</sup> This claim is both incorrect and irrelevant to the question of SBC's likelihood of success on the merits.

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<sup>2/</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499 (1996).

<sup>3/</sup> *Access Charge Reform Order*, *supra* n. 1 at ¶¶ 337-40.

<sup>4/</sup> *Id.*

<sup>5/</sup> *Iowa Utilities Board v. FCC*, 109 F.3d 418 (8th Cir. 1996).

SBC's claim is erroneous because it misconstrues the scope of the *Eighth Circuit Stay*. That ruling precludes the effectiveness of certain portions of the *Local Competition Order* pending judicial review of the FCC's conclusions concerning its jurisdiction over *intrastate* issues:

[W]e believe that the petitioners have demonstrated that they will likely succeed on the merits of their appeals based on their argument that, under the Act, the FCC is without jurisdiction to establish pricing regulations regarding intrastate telephone services . . . .

*Eighth Circuit Stay*, 109 F.3d at 425. The Eighth Circuit is not considering whether the FCC lacks jurisdiction over *interstate* access charges. Even if the Eighth Circuit were to rule that the FCC could not regulate certain intrastate aspects of unbundled network elements, the FCC still would be empowered to take all the actions adopted in the *Access Charge Reform Order* regarding interstate access charges.<sup>6/</sup>

#### **B. The Access Charge Reform Order Is Not Arbitrary And Capricious**

In arguing that it is likely to succeed on the merits of its challenge, SBC also argues that the *Access Charge Reform Order* is arbitrary and capricious primarily because it fails to identify the relevant subsidies in access charges. This contention is erroneous.

Purchasers of unbundled network elements are not immune from universal service payments. Under the new regime of the *Universal Service Order*, however, such carriers will pay into the universal service fund directly, rather than through a subsidy built into their access charges.<sup>7/</sup> Similarly, even if certain of the universal service subsidies continue in access charges,

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<sup>6/</sup> See, *Operator Services Providers of America*, 6 FCC Rcd. 4475, 4476-77 & n. 17.

<sup>7/</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (released May 8, 1997) ("*Universal Service Order*").

the *Access Charge Reform Order* has revised the access charge scheme so that only a tiny portion of the charges is even arguably attributable to universal service.<sup>8/</sup> Consequently, if access charges were imposed on unbundled network elements merely to collect the remaining subsidy amount, the purchasers would be grossly overcharged.

## **II. Grant Of A Stay Will Harm SBC's Competitors**

If the stay is granted, companies seeking to compete with SBC through the use of unbundled elements will be priced out of the local exchange and exchange access markets. As the FCC has already found twice, the requirement to pay access charges will "impair, if not foreclose, [the competitors'] ability to offer competitive access services."<sup>9/</sup> Further, it will draw into question the viability of any service which is dependent on unbundled network elements. Moreover, the pendency of the SBC request for Section 271 authority to provide in-region interLATA services complicates matters further.<sup>10/</sup> SBC will be thwarting the emergence of access competition at the very same time that it seeks to begin competing for in-region interLATA services.

Unbundled network elements are critical to the development of competition for local exchange and exchange access services. As the Commission has found repeatedly, unbundled network elements give the purchaser "the flexibility to offer all telecommunications services" while assuming "the risk that end users will not generate sufficient demand to justify the

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<sup>8/</sup> *Access Charge Reform Order*, *supra* n. 1.

<sup>9/</sup> *Id.* at ¶ 337.

<sup>10/</sup> *Application by SBC Communications, Southwestern Bell Telephone Company and Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Oklahoma*, CC Docket No. 97-121, filed April 11, 1997.

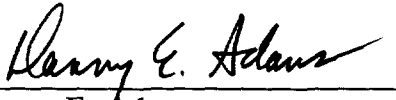
investment."<sup>11/</sup> To impose access charges on unbundled network elements, then, will be to make them uneconomic for purposes of providing local exchange and exchange access and limit competitors to resale offerings. Because this is contrary to the Congress' competitive paradigm, a stay will be harmful to SBC's competitors; the *Stay Motion* thus should be denied.

### Conclusion

For all the foregoing reasons, the *Stay Motion* must be denied.

Respectfully submitted,

**COMPETITIVE TELECOMMUNICATIONS  
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June 9, 1997

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<sup>11/</sup> *Access Charge Reform Order*, *supra* n. 1 at ¶ 340.

**CERTIFICATE OF SERVICE**

I, Roberta Schrock, hereby certify that on this 9th day of June, 1997, copies of the foregoing document were sent via first class United States mail, postage prepaid, to the following:

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